No. _____

IN THE SUPREME COURT OF THE UNITED STATES

POUK KANG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Respectfully submitted,

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QUESTION PRESENTED

Whether a permanent lifetime prohibition pursuant to 18 U.S.C. 922(g)(1) which does not require a corresponding finding of an ongoing credible threat is consistent with the history and tradition of firearm regulations under the Second Amendment.

LIST OF PARTIES

Petitioner, the Defendant-Appellant below, is Pouk Kang.

Respondent, Plaintiff-Appellee below, is the United States of America.

RELATED CASES

- *United States v. Kang*, No, 4:24-cr-00008, U.S. District Court for the Southern District of Iowa. Judgment entered February 26, 2025.
- *United States v. Kang,* No. 25-1453, U.S. Court of Appeals for the Eighth Circuit. Judgment entered July 20, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Pouk Kang, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit appears at Appendix A to the Petition and is unpublished.

The judgment of the United States District Court for the Southern District of Iowa appears at Appendix B to the Petition.

JURISDICTION

The Eighth Circuit entered judgment on July 20, 2026. This court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1254 – Court of Appeals; Certiorari; Certified Questions

Cases in the court of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

18 U.S.C. 922(g)(1)

(g) It shall be unlawful for any person –

(9) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

STATEMENT OF THE CASE

Mr. Pouk Kang was charged in count one of a one count Indictment with a violation of 18 U.S.C. § 922(g)(1) on or about January 17, 2024. The offense subjected Mr. Kang to a maximum of fifteen years in prison, if convicted.

The indictment alleged that on or about November 3, 2023, Mr. Kang possessed multiple firearms knowing he had been convicted of a crime punishable by imprisonment for a term exceeding one year.

Mr. Kang filed a Motion to Dismiss contending the permanent lifetime ban with no corresponding finding of a credible threat was in violation of Kang's Second Amendment Rights pursuant to *Bruen* and *Rahami*. No hearing was held on Kang's Motion to Dismiss and the Government presented no evidence. The Government filed a resistance to the motion to dismiss and a brief in support thereof. The Court relied upon 8th Circuit precedent citing *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024) and *United States v. Cunningham*, --- F.4th ----, ----, 2024 WL 3840135, at *5 (8th Cir. 2024) in denying the motion.

Mr. Kang entered a conditional plea on or about October 11, 2024. The plea was accepted, and on February 26, 2025, Kang was sentenced to 130 months.

Kang appealed to the United States Court of Appeals for the Eighth Circuit. Kang argued that consistent with *Rahimi*, the provisions of

922(g)(1) were unconstitutional as there is no statutory provisions relating to a finding of dangerousness and no corresponding time frame for prohibition. The United States Court of Appeals for the Eighth Circuit ultimately affirmed the District Court's ruling concluding that based upon Eighth Circuit precedent, no felony-by-felony analysis and thus no specific finding of dangerousness or a credible threat is required. Kang now appeals that decision.

REASONS FOR GRANTING THE PETITION

1. The provisions of 18 U.S.C. 922(g)(1) and the lifetime prohibition therein without a determination of an ongoing credible threat are not consistent with the history and tradition of firearm regulation.

This Court should grant review of the Eighth Circuit's conclusion that 18 U.S.C. §922(g)(1) is constitutional in this case and require an ongoing, credible threat be established by the government to justify a lifetime prohibition to establish and buttress the preexisting rights enshrined in the Second Amendment to the United States Constitution and further determine 18 U.S.C. §922(g)(1), in the absence of such provisions, fails to pass constitutional muster. The provisions of 18 U.S.C. 922(g)(1) and adopted the definition of felony in 1993, some 200 years after the passage of the Second Amendment, and following the passage of the Brady Handgun Bill. The government can establish no other analogous infringement as required by *Bruen*. Further, 18 U.S.C. §922(g)(1) contains no provisions for a determination of a

'credible' threat implicitly included in the felony definition, and imposes a lifetime ban upon those simply convicted of an offense punishable by a term exceeding one year and does so without any such determination of a credible threat as outlined by *Rahimi*. *See Rahimi*, 144 S.Ct. 1889 (June 21, 2024).

In *United States v. Rahimi*, this Supreme Court concluded an individual 'found by a court to pose a credible threat to the physical safety of another' may be 'temporarily' disarmed consistent with the Second Amendment. *United States v. Rahimi*, 144 S.Ct. 1889, 1903 (June 21, 2024). In doing so, the Court reaffirmed that for legislative limitations to be placed upon constitutionally protected rights under the Second Amendment, the government must be compelled to establish a historical analogue that imposes similar restrictions consistent with limitations understood at the time of the passage of the Second Amendment.

> In *Bruen*, we directed courts to examine our "historical tradition of firearm regulation" to help delineate the contours of the right. *Id.*, at 17, 142 S.Ct. 2111. We explained that if a challenged regulation fits within that tradition, it is lawful under the Second Amendment. We also clarified that when the Government regulates arms-bearing conduct, as when the Government regulates other constitutional rights, it bears the burden to "justify its regulation." *Id.*, at 24, 142 S.Ct. 2111.

United States v. Rahimi, 144 S.Ct. 1889, 1897 (June 21, 2024)(citing *Bruen*, 597 U.S. at 22, 142 S.Ct. 2111).

The Court reiterated that the right to keep and bear arms is among the "fundamental rights necessary to our system of ordered liberty." *Rahimi*, 144 S.Ct. at 1897 (citing *McDonald v. Chicago*, 561 U.S. 742, 778, 130 S.Ct. 3020,

177 L.Ed.2d 894 (2010)). However, like most rights, "the right secured by the Second Amendment is not unlimited." *Rahimi*, 144 S.Ct. at 1897 (citing *District of Columbia v. Heller*, 554 U.S. 570, 626, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008)). Tasked with considering the restrictions in 18 U.S.C. § 922(g)(8) this Court provided additional guidance to the outer limits of such restrictions upon Second Amendment Rights. *See Rahimi*.

In *Rahimi*, this Court, in analyzing historical analogues, confirmed the Government did not identify a founding era or Reconstruction era law that specifically disarmed domestic abusers. *Rahimi*, at 1904 (Sotomayor/Kagan Concurrence). However, in surety laws and 'affray' laws, the Court found a historical analogue which was determined to be sufficiently similar to the prohibitions outlined in 18 U.S.C. §922(g)(8). *Rahimi*, 144 S.Ct. at 1899-1903. The Court identified two aspects of these laws that are critical in determining if a restriction is proper: a finding of a credible threat, and the temporary nature of the prohibition. *Rahimi*, 144 S.Ct. at 1901-02.

In response to Defendant's Motion to Dismiss, the Government relied upon *United States v. Jackson*, and *United States v. Cunningham* from the Eighth Circuit which conclude that *Heller*, *Bruen*, and *Rahimi* do not require a felony-by-felony analysis regarding the constitutionality of 922(g)(1). *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024); *United States v. Cunningham*, 2024 WL 3840135 (8th Cir. 2024). The Eighth Circuit, bound by precedent, concluded the same. Thus, the while Court in *Rahimi*

concluded that the specific finding of a 'credible' threat, and the limited duration of the prohibition, were the determining factors that allowed §922(g)(8) to pass constitutional muster, the Eighth Circuit in *Jackson* and *Cunningham* concluded that assessment of each prior felony conviction is not necessary to specifically determine a credible threat. *See Rahimi*, *United States v. Jackson*, *United States v. Cunningham*.

The provisions of 18 U.S.C. §922(g)(1) require a conviction before one can be dispossessed of their preexisting Second Amendment rights. 18 U.S.C. §922(g)(1) (2024). However, the statutory provisions of §922(g)(1) provide for extinction of Second Amendment rights, even in the absence of a finding of a 'clear threat' of future violence by the court and without consideration of the underlying nature of the 'felony', and the Eighth Circuit has concluded that no such finding is necessary on a case-by-case basis. *See Jackson*, *Cunningham*. Even assuming *arguendo* that the fact of a conviction establishes a clear or credible threat for at least a limited duration, no provisions exist in Section 922(g)(1) to limit that prohibition to a time period when such a threat may be germane, but rather, result in a permanent prohibition.

The permanent nature of the prohibition outlined in §922(g)(1) renders the prohibition in violation of the Second Amendment facially unconstitutional. The unlimited term of prohibition is a significant departure from historical traditions under the Second Amendment. Initially,

restrictions imposed by surety laws were limited, not more than six months at a time. *Rahimi*, 144 S.Ct. at 1900. Further, as stated by the Court, like surety bonds of limited duration, Section 922(g)(8)'s restrictions are temporary, and only prohibits firearm possession so long as the defendant "is" subject to a restraining order. *Rahimi*, 144 S.Ct. at 1902. Section 922(g)(1) directs that a conviction for an offense punishable by a term in excess of one year forfeits one's Second Amendment Rights to the grave, and does so in the absence of any requirement that the government establish a corresponding clear, credible, ongoing threat to another specific to that citizen. The statutory machinations of §922(g)(1) and the holdings in *Jackson* and *Cunningham* allow for an open-ended prohibition detached from firm procedural protections and contrary to the conclusion in *Rahimi*, which requires the government to establish an ongoing credible threat. *See Rahimi*. *Rahimi* requires courts to identify the historical justification for a modern firearm restriction and determine whether the challenged application fits within that tradition; *Jackson* instead treats felony status itself as sufficient, without asking whether the particular felony or defendant bears the relevant historical relationship to dangerousness. No historical analogues exist for such a broad and permanent abolition of a constitutional right without individual due process.

The constitutionality of a permanent ban pursuant to §922(g)(1) must be anchored to historical analogues which establish a tradition of firearm

dispossession. The District Court and Eighth Circuit relied upon precedent which concludes that no finding of a credible threat is necessary on a felony-by-felony basis. The District Court and Eighth Circuit concluded that no determination, as required by *Rahimi*, that a specific person poses a credible threat is required and the prohibition is open ended. Nothing cited nor relied upon by the district court, the Eighth Circuit Court of Appeals, or presented by the government in this matter, establishes a historical analogue for such an open-ended prohibition without a finding of dangerousness. There exists no historical analogue which allows for the permanent extinction of a constitutional right and certainly no analogue for an extinction of the right in the absence of a finding of a clear, credible, ongoing threat to another posed by the individual. As such, the provisions of 18 U.S.C. §922(g)(1) should be determined to be unconstitutional and the denial of Kang's Motion to Dismiss should be reversed.

A conclusion that the burden of proof, as outlined in *Bruen* and *Rahimi*, requires the Government to prove an ongoing credible threat of a prohibited person to support a lifetime prohibition would establish consistency with a historical tradition of firearm regulation, would allow for protection of preexisting Second Amendment rights, and would be consistent with the conclusions of *Heller*, *McDonald*, *Bruen*, and *Rahimi*.

CONCLUSION

This case presents an opportunity for the Court to reaffirm the preexisting rights of citizens to possess firearms unless and until the government can establish an ongoing credible threat and limit the duration of any such prohibition to a corresponding period, thereby eliminating a lifetime prohibition without due process, consistent with the Second Amendment, *Heller*, *McDonald*, *Bruen*, and *Rahimi*. Therefore, Mr. Kang asks this court to grant certiorari.

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